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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/054,647	01/22/2002	Robert Lawton	00-1278-C	9151

20306 7590 05/06/2003

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CHICAGO, IL 60606

EXAMINER

FORD, VANESSA L

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 05/06/2003

13

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/054,647

Applicant(s)

LAWTON ET AL.

Examiner

Vanessa L. Ford

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 27 March 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: none.Claim(s) rejected: 1-9.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_ H
10. ☒ Other: Advisory Attachment.

LYNETTE R. F. SMITH  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600

***Advisory Action Attachment***

1. Applicants amendment and response filed March 27, 2003 is acknowledged.
2. Applicants amendment is not entered because amended claims 1, 3, 7-8 and claims from which they depend would require further consideration and require new searches. Amended claim 1 is directed to a composition of matter consisting essentially of an isolated polypeptide shown in SEQ ID NO:2 or a phenotypically silent amino acid substitution variant thereof that specifically binds to an anti-Ehrlichia antibody. Amended claims 3 is directed to an article of manufacture comprising packaging material and contained within the packaging material, a polypeptide consisting essentially of the polypeptide shown in SEQ ID NO:2 or phenotypically silent amino acid substitution variant thereof that specifically binds an anti-Ehrlichia antibody. Amended claim 7 is directed to a composition of matter consisting essentially of an isolated polypeptide shown in SEQ ID NO:2 or a conservative amino acid substitution variant thereof that specifically binds to an anti-Ehrlichia antibody. Amended claim 8 is directed to directed to an article of manufacture comprising packaging material and contained within the packaging material, a polypeptide consisting essentially of the polypeptide shown in SEQ ID NO:2 or conservative amino acid substitution variant thereof that specifically binds an anti-Ehrlichia antibody. The claim limitation "...specifically binds an anti-Ehrlichia antibody" has not been search or considered before the submission of the After Final Amendment. Additionally, amended claims 1, 3 and 7-8 would raise issues under 35 U.S.C. 112, first paragraph issues. For example, would all "variants" including conservative amino acid substitution variants and

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phenotypically silent amino acid substitution variants of SEQ ID NO:2 have the ability to bind anti-*Ehrlichia* antibody" ?

3. The rejection of claims 1-9 under 35 U.S.C. 112, first paragraph is maintained for the reasons of record as set forth in pages 2-5, paragraph 4 of the previous Office Action. Applicant's arguments are directed to amended claims, which have not been entered.

4. The rejection of claims 1-9 under 35 U.S.C. 112, first paragraph is maintained for the reasons of record as set forth in pages 5-8, paragraph 5 of the previous Office Action. Applicant's arguments are directed to amended claims, which have not been entered.

5. The rejection of claims 1-9 under 35 U.S.C. 102 (a) is maintained for the reasons of record as set forth in pages 8-10, paragraph 6 of the previous Office Action. Applicant's arguments are directed to the amended claims, which have not been entered.

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6. The rejection of claims 1-9 under 35 U.S.C. 102 (b) is maintained for the reasons of record as set forth in pages 10-12, paragraph 7 of the previous Office Action.

Applicant's arguments are directed to the amended claims, which have not been entered.

7. The rejection of claims 1-9 under 35 U.S.C. 102 (b) is maintained for the reasons of record as set forth in pages 13-15, paragraph 8 of the previous Office Action.

Applicant's arguments are directed to the amended claims, which have not been entered.

#### **Status of Claims**


8. No claims allowed.

#### **Conclusion**

9. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

  
Vanessa L. Ford  
Biotechnology Patent Examiner  
April 30, 2003